

105TH CONGRESS
2D SESSION

H. R. 4485

To provide for the restitution and compensation of federally held trust fund accounts for Indian Tribes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. MILLER of California (by request) introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for the restitution and compensation of federally held trust fund accounts for Indian Tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Trust Fund
5 Judicial Procedure Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) The United States unilaterally assumed the
9 role of trustee for lands and the income earned from
10 such lands, owned by Indian tribes and individual

1 Indians, beginning in 1820 for lands owned by In-
2 dian tribes and beginning in 1887 with the enact-
3 ment of the General Allotment Act, for lands owned
4 by individual Indians.

5 (2) The Federal courts have held that the
6 United States, in assuming the role of trustee, is
7 subject to the same high fiduciary standards that
8 are applied to other trustees and that the United
9 States is liable in monetary damages for breach of
10 those trust responsibilities in the same manner as
11 are other trustees.

12 (3) Since the United States, acting through the
13 Department of the Interior, assumed this trust re-
14 sponsibility it has collected and disbursed billions of
15 dollars belonging to Indian tribes and individual In-
16 dians that was earned from the leasing of their trust
17 lands and the assets on and under those lands. This
18 is not money the United States has given to the
19 tribes and individual Indians; it is their money that
20 the United States unilaterally agreed to manage for
21 them as their trustee.

22 (4) However, based on numerous reports by
23 congressional committees, the General Accounting
24 Office and private accounting firms retained by the
25 United States Government, it is possible that many

1 additional dollars were never collected or were col-
2 lected and improperly managed because the United
3 States failed in significant ways to carry out its
4 trust responsibilities to Indian tribes and individual
5 Indians. In particular, these reports have found the
6 following:

7 (A) The United States failed to install the
8 basic trust management systems that are nec-
9 essary for fulfillment of its trust responsibility.
10 For example, it never installed an accounts re-
11 ceivable system, so that it is unable to verify
12 whether income due a tribe or individual Indian
13 from a lease of its trust land was in fact paid
14 by the lessee, paid in the correct amount, paid
15 in a timely manner or paid and deposited.

16 (B) The United States is unable to meet a
17 trustee's most basic responsibility, that of pro-
18 viding the trust's beneficiary with a full ac-
19 counting of all transactions involving the trust
20 assets and income.

21 (5) The United States one effort to reconstruct
22 the records in order to provide such an accounting,
23 the so-called "Arthur Andersen Reconciliation", cost
24 over \$20,000,000 just for reconstructing the general
25 ledger, which is one small portion of the trust man-

1 agement system for one 20-year period. Yet even at
2 that cost, the work product has generally been con-
3 sidered to be inadequate because too many of the
4 records needed to perform a complete reconciliation
5 had been destroyed or were missing. As a result, it
6 would not be a prudent use of Federal monies to
7 carry out further efforts of this kind since the costs
8 will be prohibitive while such efforts would fail to
9 provide an accurate accounting.

10 (6) Under trust law principles, when a trustee
11 has lost or destroyed records so that it is unable to
12 provide the beneficiary with a full trust accounting,
13 the beneficiary's remedy is to provide the court with
14 an estimate of the amount that the trustee lost. The
15 trustee is liable for that amount, unless it can dis-
16 prove the estimate, with the burden of proof on the
17 trustee for all matters. Further, a trustee who is un-
18 able to provide a trust accounting is liable for the
19 beneficiary's attorney's fees and costs.

20 (7) The individual Indians whose lands are held
21 in trust by the United States filed a class action
22 lawsuit against the Secretary of the Interior on June
23 9, 1996, in Federal District Court for the District
24 of Columbia, seeking restitution for all losses they
25 have suffered as a result of the United States breach

1 of its trust responsibility in regard to management
2 of their trust funds. Defending that suit will require
3 the United States to produce millions of pages of
4 records, such that the Department of Justice has es-
5 timated that the cost of gathering the records, pre-
6 paring for and litigating that one lawsuit could be
7 extremely costly and the litigation could be ex-
8 tremely lengthy.

9 (8) If each of the 200 Indian tribes who have
10 had funds managed in trust by the United States
11 filed a similar lawsuit, it would impose undue bur-
12 dens on the courts and significant costs on the
13 United States and the Tribes.

14 (9) The United States has both a legal and
15 moral obligation to provide these trust beneficiaries
16 with the same rights and compensation they would
17 be entitled to if their trustee were a private party
18 and had engaged in similar breaches of trust. Since
19 the United States is demanding that the Swiss Gov-
20 ernment provide a full accounting of the funds its
21 banks managed for victims of the Holocaust, the
22 United States must do the same when it is in the
23 capacity of trustee for money belonging to others.

24 (10) Because so many of the systems were
25 never installed and because so many of the records

1 are missing, it is impossible for Congress or the ex-
2 ecutive branch to produce any rational estimate of
3 the United States liability as a result of its long-
4 standing breach of trust, such that this problem can-
5 not be resolved through legislation that provides a
6 certain fixed amount of compensation.

7 (11) For these reasons, while the United States
8 has already been sued for breach of trust by the in-
9 dividual Indian trust account holders, it is in the
10 best interest of the United States for Congress to
11 avoid massive litigation by the tribal trust bene-
12 ficiaries by legislating a procedure that is com-
13 prehensive in its scope so that when completed, all
14 trust fund claims have been resolved and extin-
15 guished, and that will provide the tribal trust bene-
16 ficiaries with their full procedural and substantive
17 rights, while placing limits on the amount of time
18 and cost required to resolve this problem.

19 **SEC. 3. PURPOSE.**

20 It is the purpose of this Act to establish a procedure
21 that resolves all trust fund liability the United States may
22 have to Indian tribes in a manner that is consistent with
23 trust law principles, that provides the tribes with full pro-
24 cedural rights, that has reasonable time and cost restric-
25 tions, that consolidates issues and processes to the extent

1 possible in order to avoid multiple litigation to the extent
2 that can be accomplished consistent with the right of the
3 parties, that provides for the United States, as trustee in
4 breach, to pay all of the costs of such a proceeding, and
5 that is comprehensive in that it will address, provide com-
6 pensation for, and then extinguish, the United States li-
7 ability for breach of trust at all stages of the trust fund
8 process and for all of the years the United States has man-
9 aged Indian trust funds.

10 **TITLE I—ESTABLISHMENT OF**
11 **THE TEMPORARY COURT FOR**
12 **TRIBAL TRUST FUND RES-**
13 **TITUTION**

14 **SEC. 101. ESTABLISHMENT OF THE COURT.**

15 There is hereby established the Temporary Court for
16 Tribal Trust Fund Restitution. The Court shall, pursuant
17 to the provisions of this title, fully and expeditiously re-
18 solve all matters involving the management by the United
19 States, in its capacity as legal trustee, of moneys belong-
20 ing to Indian tribes.

21 **SEC. 102. COMPOSITION OF THE COURT.**

22 The Court shall consist of 3 judges designated by the
23 Chief Justice of the United States, 2 of whom shall be
24 Federal District Court judges and 1 of whom shall be a
25 Court of Federal Claims judge. The Chief Justice of the

1 United States shall designate 1 of such judges as the chief
2 judge of the court.

3 **SEC. 103. RULES OF PROCEDURE.**

4 Except as otherwise provided by this Act, proceedings
5 before the Court shall be subject to the Federal Rules of
6 Civil Procedure.

7 **SEC. 104. FUNCTIONS OF THE COURT.**

8 The Court shall be the legal forum within which shall
9 be carried out the 2-phased procedure set out in this Act
10 for resolving tribal trust fund breach of trust claims
11 against the United States. In phase I, the Court shall de-
12 cide which economic model(s) shall be used to estimate
13 the liability of the United States for breach of its trust
14 responsibility of the individual Indian tribes in light of the
15 fact that the United States is unable to provide an accept-
16 able trust accounting to the tribes because it never in-
17 stalled adequate trust management systems and has lost
18 or destroyed many of the trust records. In phase II, the
19 Court shall apply those economic model(s) to determine
20 the United States liability to each tribe that chooses to
21 be a party to these proceedings.

22 **SEC. 105. SPECIAL MASTER.**

23 (a) APPOINTMENT.—Within 30 days after the judges
24 are appointed, they shall appoint a special master, a per-
25 son with expertise in trust law, Indian law, and the appli-

1 cation of alternative methods for determining economic
2 loss when relevant documents have been lost or destroyed.
3 He or she shall be compensated at the same rate and from
4 the same source that is customary for court-appointed spe-
5 cial masters, subject to such limitations as are established
6 by the chief judge.

7 (b) STAFF AND CONSULTANTS.—The special master
8 shall, within 30 days of appointment, submit to the chief
9 judge, for his review and approval, a staffing plan and
10 a budget for his office. The chief judge shall act on said
11 submission within 30 days of receipt and shall authorize
12 the release of necessary funds.

13 (c) ACCESS TO DOCUMENTS.—Without a subpoena or
14 other action by the Court, the Special Master shall be pro-
15 vided full and immediate access to all documents in the
16 possession of the United States regarding its management
17 of the trust funds and assets of those tribes that have cho-
18 sen to participate in the proceedings authorized by this
19 title. The Special Master shall initiate contempt of court
20 proceedings against any Federal employee or official who
21 fails to provide such access or otherwise cooperate with
22 the Special Master.

23 **SEC. 106. THE PHASE I PROCEDURE.**

24 (a) PLAINTIFF AND DEFENDANT.—During Phase I,
25 the plaintiff shall be a class consisting of all Indian tribes

1 that have had funds managed in trust by the United
2 States. The defendant shall be the United States of Amer-
3 ica.

4 (b) PLAINTIFFS' COUNSEL.—The class of tribal
5 plaintiffs shall be represented in the Phase I proceeding
6 by 1 attorney named by each tribe that the court deter-
7 mines, pursuant to appropriate criteria, is a major stake-
8 holder on the trust fund issue plus no more than 5 attor-
9 neys selected by the chief judge from nominees submitted
10 by tribes that are members of the class of plaintiffs in
11 Phase I but are not major stakeholders. The selection
12 shall be conducted in a manner that provides that plain-
13 tiffs with legal expertise in Indian trust law that reflects
14 the diverse nature of the different sources of trust income,
15 such as oil and gas, timber, agricultural leasing, and in-
16 vestments. Plaintiffs' counsel shall be compensated at
17 their usual and accustomed hourly rates and for cus-
18 tomary expenses, except that the chief judge shall impose
19 such limitations on the number of hours and the amount
20 of expenses for which the attorneys may receive compensa-
21 tion for their work on Phase I. The plaintiffs' attorneys
22 shall be compensated from the same source of funds the
23 Department of Justice uses to compensate attorneys of
24 parties that are awarded fees and expenses under the
25 Equal Access to Justice Act when such fees and expenses

1 are not passed back to the particular agency that was the
2 defendant in that case.

3 (c) DEVELOPMENT OF ECONOMIC MODELS FOR ES-
4 TIMATING UNITED STATES LIABILITY.—The Special Mas-
5 ter, staff and experts, with full participation of plaintiffs’
6 and defendants’ counsel and their experts shall, within 18
7 months from the date of the appointment of the Special
8 Master, prepare and submit to the court, a set of economic
9 models that can be used to estimate how much of the bene-
10 ficiaries’ money the trustee lost as a result of breach of
11 its trust responsibilities, beginning on the first day that
12 the United States began acting as trustee. The economic
13 models shall be based on applicable principles of trust law
14 and shall use comparative analysis or such other forensic
15 accounting techniques as the Special Master determines
16 are appropriate. The models will be used in Phase II to
17 determine the amount of compensation each plaintiff tribe
18 is entitled to as a result of the United States breach of
19 its trust responsibility in its management of that tribe’s
20 trust funds, beginning at the point at which the trustee
21 was responsible for the management of the trust assets
22 for that tribe, but excluding those years for which the
23 United States provided a trust accounting to that Tribe
24 that satisfies trust law requirements and excluding those
25 losses for which the Tribe has been otherwise com-

1 pensated. The submission to the Court shall consist of 1
2 or more economic models as the Special Master determines
3 are needed, in light of the diversity among the tribal situa-
4 tions and the different kinds of trust assets (e.g., timber,
5 agricultural land, minerals, investments) that are at issue
6 in this proceeding, to determine the losses incurred by
7 tribes as a result of the United States failure to meet its
8 legal trust responsibility.

9 (d) OBJECTIONS TO THE SPECIAL MASTER'S SUB-
10 MISSION.—Within 45 days after the Special Master sub-
11 mits his or her recommended set of economic models to
12 the Court, either party may file objections to those rec-
13 ommendations. The Court, after providing the parties an
14 opportunity to submit written briefs and to present oral
15 argument, shall issue its decision on such objections within
16 90 days after they were filed with the Court. There shall
17 be no appeal from the decision of the Court.

18 (e) APPLICABLE TRUST LAW PRINCIPLES.—In deter-
19 mining the applicable principles of trust law to apply in
20 developing the economic models and in deciding objections
21 to those models, the Special Master and the Court shall
22 first be guided by principles of trust law established by
23 Federal Indian trust law cases. If there are no applicable
24 Federal cases on a particular matter, the Court shall apply
25 trust law principles established by other Federal court de-

1 cisions on trust law. If there are no applicable Federal
2 trust law cases, the Court shall apply general principles
3 of trust law as established by State court decisions. If
4 there are inconsistencies among the States on a particular
5 issue, the Court, after giving the parties an opportunity
6 to be heard, shall select the principle of trust law that
7 it concludes best reflects the purposes of this Act.

8 **SEC. 107. PHASE II PROCEEDINGS.**

9 (a) INITIATION OF NEGOTIATIONS.—Within 45 days
10 after the completion of Phase I, the Special master and
11 his or her staff shall, in the capacity as mediator, begin
12 to initiate negotiations between each plaintiff tribe and the
13 United States for the purpose of seeking agreement on
14 the application of the economic models to that tribe and
15 then to produce an estimate of the trustee's liability to
16 that tribe. The tribe and the United States may introduce
17 additional evidence to demonstrate why the trustee's liabil-
18 ity to that tribe should deviate from that estimate pro-
19 duced by application of the economic models developed in
20 Phase I: *Provided*, That the evidence that may be intro-
21 duced by the United States is limited to documents it had
22 previously produced in the course of carrying out its trust
23 management responsibility.

24 (b) STIPULATED SETTLEMENT PERMITTED.—If,
25 through the negotiation process, the parties are able to

1 reach agreement, they shall submit a stipulated settlement
2 to that effect to the Court, which shall issue an order ap-
3 proving the settlement, unless the Court determines it is
4 arbitrary or unconscionable.

5 (c) EFFECT OF INABILITY TO REACH AGREEMENT—

6 If, within 18 months from the initiation of such negotia-
7 tions with a particular tribe, the parties are unable to
8 reach agreement on the amount of the trustee's liability,
9 the Special Master shall terminate the process and shall,
10 within 45 days thereof, submit to the Court his or her
11 recommendation for the amount of the liability. The par-
12 ties shall have an opportunity to submit memoranda of
13 law and for oral argument before the Court to oppose or
14 support the Special Master's recommendation. The Court
15 shall issue a final order establishing the amount of the
16 liability within 6 months after the Special Master submits
17 his or her recommendation to it. There shall be no appeal
18 from that decision.

19 (d) FEES AND EXPENSES.—During Phase II, legal
20 counsel for each tribe shall be paid at his or her usual
21 and customary fee, plus expenses, from the fund used by
22 the Department of Justice to pay attorneys for parties
23 pursuant to the Equal Access to Justice Act, subject to
24 such limitations on each attorney's hours and expenses as
25 are established by the Court. The Court shall also provide

1 each tribe and the United States with a budget for the
2 hiring of experts for use during this stage of the proceed-
3 ings.

4 **SEC. 108. STATUTE OF LIMITATIONS.**

5 The statute of limitations shall not be a defense to
6 any claim under this Act for any year in which the United
7 States acted in the capacity as trustee for a tribe unless
8 the United States can demonstrate that, prior to the date
9 of the enactment of this Act, it had provided the tribe with
10 a full and complete trust accounting, as that term is de-
11 fined by applicable trust law principles, for the year at
12 issue.

13 **SEC. 109. PAYMENT.**

14 Within 60 days after entry of the Court's final deci-
15 sion for a particular tribe, the United States shall pay to
16 that tribe, from the Judgment Fund Account of the
17 United States in the Department of the Treasury, the
18 amount determined to be the United States liability to
19 that tribe as provided for in the Court's order. At the
20 tribe's option, the payment may be deposited in the tribe's
21 account in the Office of Trust Fund Management, Depart-
22 ment of the Interior, or may be deposited in such other
23 account as is requested by the tribe.

1 **SEC. 110. EXTINGUISHMENT OF CLAIMS.**

2 Upon receipt of payment by a tribe pursuant to the
3 procedures established by this Act, all claims that a tribe
4 may have against the United States for breach of the
5 United States trust responsibility for management of trust
6 funds of such tribe, beginning with that stage in the trust
7 management process at which the trustee is required to
8 lease the trust asset, shall be completely and permanently
9 extinguished for the years that were subject to the proce-
10 dures set out in this title.

11 **SEC. 111. OPTING OUT.**

12 A tribe may, on an account-by-account basis, choose
13 to opt out of the procedure established by this Act by,
14 within 1 year of the effective date of this Act, submitting
15 a motion, accompanied by a resolution from the tribe to
16 that effect, to the Court. If a tribe opts out of the proce-
17 dure established by this Act, it may pursue its claims
18 through direct settlement negotiations with the Secretary
19 and mediation procedures provided in title II of this Act,
20 or through litigation under the established legal proce-
21 dures for bringing claims against the United States, ex-
22 cept that none of the rights provided tribes by this Act
23 shall be available to such a tribe, unless the court hearing
24 that tribe's claims finds an independent source for such
25 rights. A tribe that is presently in litigation on a matter
26 subject to this Act may, at its option, request that the

1 court transfer the case to the Temporary Court estab-
2 lished by this Act. The court shall grant that motion un-
3 less it finds that doing so will not serve the interests of
4 justice in that case.

5 **SEC. 112. AVAILABILITY OF RECORDS.**

6 Effective upon the enactment of this Act, the Sec-
7 retary shall make available to a Tribe all records and doc-
8 uments requested by that Tribe involving the United
9 States management of trust funds and trust resources be-
10 longing to that Tribe, regardless of whether or not the
11 Tribe has chosen to participate in the procedures set out
12 in sections 106 and 107. The Secretary shall provide the
13 requested information within 45 days of the request: *Pro-*
14 *vided further*, That, where a request imposes severe work-
15 load burdens on the Secretary, he may provide the infor-
16 mation within 120 days of the request, by providing the
17 Tribe within 30 days of the request, a written notice de-
18 scribing the burdens that make it impossible to comply
19 within 45 days. If the Secretary fails to provide the re-
20 quested documentation within the time provided for in this
21 section, he shall be subject to a civil penalty of \$500 per
22 day for each day he fails to comply: *Provided further*, That
23 the Secretary may apply to the Court established pursuant
24 to section 101 of this Act for a waiver of such penalty
25 upon a showing of good cause. All penalties shall be paid

1 out of the funds appropriated to the Office of the Sec-
2 retary of the Interior.

3 **SEC. 113. KNOWN ERRORS.**

4 The Secretary shall, within 120 days of the effective
5 date of this Act, compensate each tribe for all known er-
6 rors identified in the reconciliation report that resulted in
7 losses or underpayments to that tribe's trust fund account.
8 Such payments shall be made without prejudice to any
9 claims the tribe may elect to bring under other sections
10 of this Act.

11 **SEC. 114. INTEREST.**

12 Any compensation paid to a tribe pursuant to this
13 title shall include interest from the date of the loss or error
14 to the date of the adjustment or payment of compensation.
15 The rate of interest shall be the average Treasury rate.
16 Interest shall be compounded on a daily basis.

17 **SEC. 115. SOURCE OF FUNDS FOR PAYMENT.**

18 All payments made to tribes pursuant to the provi-
19 sions of this title shall be made from the Permanent Judg-
20 ment Claims Fund (section 1304 of title 31 of the United
21 States Code). No funds for implementing this title or for
22 paying damage claims pursuant to it shall be taken from
23 appropriations for the operation of or programs for the
24 benefit of Indians.

1 **TITLE II—EXPEDITED PROCE-**
2 **DURE FOR TRIBAL TRUST**
3 **FUND RESTITUTION**

4 **SEC. ____.**

5 A Tribe, by resolution, may select the following set
6 of procedures for resolving the United States liability for
7 mismanagement of that Tribe's trust funds and resources.
8 A Tribe that selects this set of procedures is barred from
9 participating in the procedures set out in title I of this
10 Act.

11 **SEC. 201. DIRECT NEGOTIATIONS WITH THE SECRETARY.**

12 (a) IN GENERAL.—A tribe that has opted out of the
13 proceedings established in title I may, within 1 year of
14 the effective date of this Act, by letter sent by registered
15 mail, request that the Secretary enter into negotiations
16 with the tribe to settle the United States' liability to that
17 tribe for mismanagement of that tribe's trust funds and
18 assets. In the letter, it shall indicate whether it will submit
19 a settlement proposal or if it chooses for the Secretary
20 to submit the initial proposal. The parties shall, within
21 60 days of the date of the tribe's request, engage in direct
22 negotiations under such arrangements as are agreed to by
23 them: *Provided*, That, the Secretary in his discretion, may
24 delay the commencement of any such negotiations if insuf-
25 ficient resources or personnel require. If the parties reach

1 agreement, it shall be incorporated into a settlement
2 agreement. If, after 1 year the negotiations have failed
3 to produce a settlement, or upon mutual agreement by the
4 parties at any time that the negotiations will not produce
5 a settlement, the negotiations shall terminate unless both
6 parties agree to their continuation. Upon termination of
7 the negotiations, the tribe shall, within 180 days, either—

8 (1) initiate the mediation procedure provided
9 for in section 202 of this title;

10 (2) notify the Court established pursuant to
11 title I of this Act that it is entering those proceed-
12 ings as a plaintiff; or

13 (3) file suit in Federal court under the regular
14 procedures established for monetary claims against
15 the United States.

16 (b) EXTINGUISHMENT OF CLAIM FOR LACK OF AC-
17 TION.—If the tribe fails to take any of these actions within
18 the time period provided, its claims for monetary damages
19 against the United States for breach of its trust respon-
20 sibility for all years prior to the effective date of this Act
21 shall be extinguished.

22 **SEC. 202. MEDIATION.**

23 A tribe that has opted out of the proceedings estab-
24 lished by title I, may either within 1 year of the effective
25 date of this Act, or within 180 days of the termination

1 of negotiations with the Secretary under section 201 of
2 this Act, request mediation or arbitration to resolve the
3 United States liability to that tribe for mismanagement
4 of that tribe's trust funds and assets, under the following
5 procedures:

6 (1) The mediator or arbitrator shall be provided
7 by the American Arbitration Association.

8 (2) The mediation or arbitration shall com-
9 mence within 60 days after the date of the tribe's
10 request: *Provided*, That the Secretary, in his discre-
11 tion, may delay the commencement of any such me-
12 diation or arbitration if insufficient resources or per-
13 sonnel require.

14 (3) The parties may agree to conduct, or the
15 mediator or arbitrator may direct that there be con-
16 ducted, limited additional analysis of the trust man-
17 agement records to facilitate a settlement.

18 (4) The parties shall exchange any records each
19 may have with regard to the subject of the arbitra-
20 tion or mediation.

21 (5) The arbitration shall continue until a deci-
22 sion is issued by the arbitrator. Such decision shall
23 be binding and there shall be no appeal from it.

24 (6) The mediation shall terminate 1 year after
25 the date of the first meeting unless the parties mu-

1 tually agree to its continuation. Upon termination, a
2 tribe, within 1 year of the date of termination of the
3 mediation, shall either enter the proceedings estab-
4 lished pursuant to title I of this Act or file suit in
5 Federal court pursuant to the procedures established
6 for bringing monetary claims against the United
7 States. If the tribe fails to take either action within
8 the time period provided, its claims for monetary
9 damages against the United States for breach of its
10 trust responsibility for all years prior to the effective
11 date of this Act shall be extinguished.

12 (7) If an agreement on the United States liabil-
13 ity is reached through mediation or through a deci-
14 sion by the arbitrator, it shall be incorporated into
15 a settlement agreement.

16 **SEC. 203. PAYMENT.**

17 Within 60 days after a settlement agreement is en-
18 tered into resulting from the procedures set out in this
19 title and said settlement is approved by the Attorney Gen-
20 eral of the United States, the United States shall pay to
21 that tribe, from the Permanent Judgment Fund Account
22 of the United States in the Department of the Treasury,
23 the amount determined to be the United States liability
24 to that tribe as provided for by the procedures established
25 by this title. At the tribe's option, the payment may be

1 deposited in the tribe's account in the Office of Trust
2 Fund Management, Department of the Interior, or may
3 be deposited in such other account as is requested by the
4 tribe.

5 **SEC. 204. ATTORNEYS FEES AND COSTS.**

6 If a tribe participates in 1 of the procedures provided
7 for in sections 201 and 202 of this title and such proce-
8 dure has resulted in a settlement, the tribe shall be enti-
9 tled to the award of reasonable attorneys fees and costs
10 pursuant to the Equal Access to Justice Act: *Provided*,
11 That the eligibility requirements at section 2412(d)(2)(B)
12 of that Act shall not be applicable.

13 **SEC. 205. INTEREST.**

14 Any compensation paid to a tribe pursuant to this
15 title shall include interest from the date of the loss or error
16 to the date of the adjustment or payment of compensation.
17 The rate of interest shall be the average Treasury rate.
18 Interest shall be compounded on a daily basis.

19 **SEC. 206. EXTINGUISHMENT OF CLAIMS.**

20 Upon receipt of payment by a tribe pursuant to the
21 procedures established by this title, all claims that a tribe
22 may have against the United States for breach of the
23 United States trust responsibility for management of trust
24 funds of said tribe, beginning with that stage in the trust
25 management process at which the trustee is required to

1 manage the trust asset, shall be completely and perma-
2 nently extinguished for the years that were subject to the
3 procedures set out in this title.

4 **SEC. 207. SOURCE OF FUNDS FOR PAYMENT.**

5 All payments made to tribes pursuant to the provi-
6 sions of this title shall be made from the Permanent Judg-
7 ment Claims Fund (section 1304 of title 31 of the United
8 States Code). No funds for implementing this title or for
9 paying damage claims pursuant to it shall be taken from
10 appropriations for the operation of or programs for the
11 benefit of Indians.

